IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5753 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIM SUMARBHAI SUMRA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 28.2.2004, by

which he is detained as a 'dangerous person' under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenu was also served with the grounds of detention.

In the grounds of detention, there is a reference about four criminal cases, which are registered against the petitioner under Sections 379 and 356 read with Section 114 of the Indian Penal Code. It is alleged against the petitioner that he is snatching gold chains and accordingly, commits theft. It is also alleged that he is a "headstrong person".

The authority, after considering the said cases and after recording the statements of witnesses, whose names have not been disclosed to the petitioner, has detained the petitioner under PASA. It is the aforesaid order which is impugned in this petition.

It is submitted by the learned Advocate for the petitioner that so far as the aforesaid cases are concerned, they are all cases of an individual nature and it is submitted that it cannot be said that the detenu has violated public order. In order to substantiate her submission, the learned Advocate for the petitioner has placed reliance upon a Division Bench decision of this Court rendered in Special Criminal Application No.1681 of 1992, wherein the Division Bench of this Court held as under in paragraphs 5 and 6 :-

" ... ...

5. Learned counsel for the petitioner submits that the activities alleged against the petitioner would affect only maintenance of law and order and not public order. In her submission the detaining authority has lost sight of the distinction between the concept of 'law and order' and that of 'public order'. In this connection reference may be made to a decision of the Supreme Court in the case of Harpreet Kaur vs. State of Maharashtra, reported in AIR 1992 SC 979. After referring to its earlier decisions, in para 14 of the judgment the Supreme Court has observed as follows :

"From the law laid by this Court, as noticed above, it follows that it is the degree and extent of the reach of the objectionable activity upon the society

> which is vital for considering the question whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of 'public order'. Whenever an order of detention is questioned, the courts apply these tests to find out whether the objectionable activities upon which the order of detention is grounded fall under the classification of being prejudicial to 'public order' or belong to the category of being prejudicial only to 'law and order'. An order of detention under the Act would be valid if the activities of a detenu affect 'public order' but would not be so where the same affect only the maintenance of 'law and order'. Facts of each case have, therefore, to be carefully scrutinised to test the validity of an order of detention."

Again in para 17 of the judgment the Supreme Court has observed that in each case the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether the activities are prejudicial to maintenance of 'public order' or only 'law and order'.

6. Having regard to the aforesaid binding law laid down by the Supreme Court, in the instant case, the court is required to scrutinise as to whether the activities alleged against the petitioner-detenu would affect maintenance of 'law and order' or maintenance of 'public order'. Be it noted that out of 19 cases registered against the petitioner, none of the criminal cases has been tried so far. All the cases are pending before court. In 14 cases, the allegation is of theft of gas cylinders. In one case the allegation is of theft of V.C.R. and in two cases the allegation is of theft of colour T.V. In one case it is alleged that a motor cycle is stolen and in another case silver ornaments and wrist watch are alleged to have been involved in the offence of theft and other

allied offences. By the very nature of the offences it would be difficult to say that these offences would affect the even tempo of public life. In 14 offences gas cylinders have been stolen. Of course this activity as alleged is repetitive in nature. But it is difficult to say that the extent and reach of the offence is such that it would create problem of maintenance of 'public order'. Similar is the position with regard to other five cases. As far as the statements of four witnesses are concerned, they refer to two separate incidents one is alleged to have taken place on June, 1992 at about 9.00 p.m. It has happened on account of non-payment of price of eatables taken from a hotel. Another incident is alleged to have taken place on June 3, 1992 which is alleged to have taken place at about 3.00 p.m. on June 3, 1992, and the cause of the same is also non-payment of price of pan. Both these incidents at the most affect individuals and not the society at large. Applying the aforesaid principle laid down by the Supreme Court to the facts and circumstances of this case it is difficult to say that the detaining authority was justified in arriving at the satisfaction that the activities of the petitioner detenu were likely to adversely affect maintenance of 'public order'. All these activities either taken singly or cumulatively may at the most create some law and order problem. In this view of the matter the satisfaction arrived at by the detaining authority cannot be said to be germane and stands vitiated. Therefore, the petition is required to be allowed.

... ..."

In view of the above judgment of the Division Bench of this Court, it cannot be said that the petitioner has violated public order, as, at the most, it can be said that there is a breach of law and order, and, accordingly, the petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless the detenu is required in connection with any other case. The Rule is made absolute accordingly.

At this stage, the learned Advocate for the

petitioner made a voluntary statement that the detenu will not enter Rajkot City upto 31st October, 2004. This voluntary statement is recorded so that the petitioner may not be allowed to enter Rajkot City and commit same type of offences. It is for the authority to monitor the same.

16th August, 2004 (P.B. Majmudar, J.)

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(apj)